Office-Supreme Court, U.S.
FILED
JUN 15 1966
JOHN F. DAVIS, CLERK

LIBRARY
SUPREME COURT, U. S.

No. ~~1416~~ 234

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1965

GIULIO BRUNI,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT OF PETITION.

JOSEPH I. BULGER,
188 West Randolph Street
Chicago, Illinois 60601
STate 2-4426
Attorney for Petitioner.

UNITED STATES LAW PRINTING CO., CHICAGO 15, ILL. LAkeview 5-6581

INDEX.

	PAGE
Summary Statement of the Matter Involved	1
Facts	2
Questions Presented	3
Statutes Involved	3
Jurisdiction	4
Reasons for Allowance of the Writ	4
Argument	5
Conclusion	9
Appendix—Opinion	App. 1-5

AUTHORITIES.

Burton v. U. S., 202 U.S. 344	5
Carter v. McClaughry 183 U.S. 365	5
Eberling v. Morgan, 237 U.S. 625	5
Fisher v. U. S., 231 F.2d 99	7, 9
Gravieres v. U. S., 220 U.S. 338	5
Helton v. U. S., 231 F.2d 654	9
Michelson v. U. S., 335 U.S. 469	9
Morgan v. Devine, 237 U.S. 632	5
Nielsen, 131 U.S. 176	5
Sibona v. U. S., 294 Fed. 272	7

PAGE

Tritico v. U. S., 4 Fed. 664 5

U. S. v. Barrett, 111 F.2d 369 8

U. S. v. Karll, 105 U.S. 611 8

U. S. v. Kelley, 186 F.2d 598 8

U. S. v. Mann, 108 F.2d 354 9

U. S. v. Palermo, 250 F.2d 872 9

U. S. v. Ruffino, 67 F.2d 440 8

MISCELLANEOUS.

Title 18, United States Code Annotated, Section 371 3

Title 18, United States Code Annotated, Section 471 2, 7

Title 18, United States Code Annotated, Section 472 ..... 2, 3, 6, 8

Title 18, United States Code Annotated, Section 474 .. 2, 3

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1965

No.

GIULIO BRUNI,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT OF PETITION.

SUMMARY OF THE MATTER INVOLVED

To the Honorable Chief Justice and Associate Justices of the United States:

The petitioner was found guilty by the court, without a jury, as charged in the indictment and a sentence of five (5) years imprisonment was imposed to run concurrently with the sentence imposed in the United States District Court for the Eastern District of Wisconsin. No fine was imposed.

THE INDICTMENT

65 CR 266 is in Four Counts.

Count One (1) alleges that from July to September, 1964, in the Federal District, Giulio Bruni, Alfred Bruni, and Fulvio Smaldone and John G. Johnson (a co-conspirator but not a defendant), knowingly and unlawfully conspired to make $3,000,000.00 in counterfeit $5 and $10 currency of the United States with intent to defraud in violation of Section 471, Title 18, U.S.C. and further alleges overt acts to further the conspiracy by buying paper and a printing press in violation of Section 371, Title 18, U.S.C.

Count Two (2) (App. 8) alleges a substantive crime that on or about August 3, 1964, in the Federal District, Giulio Bruni, Alfred Bruni and Fulvio Smaldone, defendants, and John G. Johnson (a co-conspirator but not a defendant) were unlawfully and feloniously in possession of metal plates now destroyed which bore an impression and likeness of $5 and $10 United States currency with intent to forge and counterfeit such securities in violation of Section 474, Title 18, U.S.C.

Count Three (3) (App. 10) alleges that on or about September 9, 1964, in this Federal District that Giulio Bruni, Alfred Bruni and Fulvio Smaldone, defendants, and John G. Johnson and Raymond P. Spencer, co-conspirators but not defendants, conspired unlawfully and knowingly at divers places to pass forged and counterfeit obligations of the United States with intent to defraud in violation of Section 472, Title 18, U.S.C. and committed overt acts in furtherance of said conspiracy.

The indictment further charged that the defendants had conversations with John G. Johnson and engaged in acts of passing counterfeit $20 Federal Reserve Notes on September 13, 1964, at Lowell and Astico, Dodge County,

Wisconsin, situated in the Eastern District of Wisconsin (Milwaukee) in violation of Section 371, Title 18, U.S.C.

Count Four (4) of the indictment alleges a substantive crime against Giulio Bruni in that he possessed and concealed counterfeit $20 Federal Reserve Notes in his residence at River Forest, Illinois, in violation of Section 472, Title 18, U.S.C.

FACTS:

Co-conspirator, John G. Johnson, not indicted, testified in this case for the Government.

Co-conspirator, Raymond P. Spencer, not indicted, testified for the defendant, Giulio Bruni.

Alfred Bruni, a defendant, left the United States before Indictment; has not been tried.

Fulvio Smaldone, a defendant, was acquitted in this case.

QUESTIONS PRESENTED

Should a conviction be sustained upon all counts of the indictment based upon the evidence presented by the Government?

STATUTES INVOLVED

18 U. S. C. A. 371.

18 U. S. C. A. 472.

18 U. S. C. A. 474.

JURISDICTION

The date of the judgment to be reviewed is May 6, 1965. Appellant's petition for rehearing was denied on May 17, 1966. Jurisdiction to issue the Writ is under the provisions of Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925. (28 U.S.C.A., Sec. 1254). Based on Title 28, U.S.C. 1940 Ed. Sec. 346 and 347 (March 3, 1911, C. 231, Sec. 239, 240, 36 Stat. 1157; Feb. 13, 1925, C. 229, Sec. 1, 43 Stat. 939; Jan. 1, 1928, C. 14, Sec. 1, 45, Stat. 54; June 7, 1934, C. 426, 48 Stat. 926). (From Revisors Note, Title 28, U.S.C.A. Judiciary and Judicial Procedure, Sec. 1254, P. 42).

REASONS FOR ALLOWANCE OF THE WRIT

That the Government failed to prove the defendant guilty beyond a reasonable doubt.

That the lower court erred in finding the defendant guilty on all counts.

That the evidence viewed in a light most favorable to the Government fails to support the judgment of the lower court.

That the trial and conviction in this case constitutes double jeopardy.

ARGUMENT.

The defendant, Giulio Bruni, filed his Motion of Double Jeopardy which was overruled. His motion was predicated upon the fact that he was indicted and tried for the same offense in the Eastern District of Wisconsin, docketed in this court as number 1364.

All the witnesses who testified in the Milwaukee case also testified in the Chicago case. All the evidence presented in the Milwaukee case was presented in the Chicago case, except the photographs.

This defendant stood trial in the different courts in two different jurisdictions for the same offense charged by the same complainant.

The conviction in the Milwaukee case should bar the prosecution in the Chicago case even though the court in this case sentenced defendant to concurrent sentences.

In *Re: Nielsen,* 131 U.S. 176, the Court said:

> "Where, as in this case, a person has been tried and convicted for a crime which has various incidents included in it he cannot be second time tried for one of those incidents without being put in jeopardy for the same offense."

Other cases supporting this principle are:

Tritico v. *U. S.,* 4 F.2d 644;
Carter v. *McClaughry,* 183 U.S. 365;
Burton v. *U. S.,* 202 U.S. 344;
Gravieres v. *U. S.,* 220 U.S. 338;
Morgan v. *Devine,* 237 U.S. 632;
Eberling v. *Morgan,* 237 U.S. 625.

The principle rule established is that if the same evidence will support a verdict of conviction on both offenses, a prosecution for one will bar a prosecution for the other.

COUNT I

The defendants, Giulio Bruni and Fulvio Smaldone, both testified and both denied that the purchase of a printing press, paper, ink, and other materials was for an illegal purpose, but rather to print forms for a hospital which Dr. Bruni had recently organized and opened. The only testimony to support the charge in this count came from John G. Johnson, a co-conspirator and a self-admitted perjurer and liar.

COUNT II

Again, the defendants testified that neither ever had possession of plates to print counterfeit United States currency. It is significant that no plates were ever found, nor were any samples produced. Again, the only testimony to support this count came from co-conspirator John G. Johnson.

COUNT III

The charges set forth in Count Three (3) of the indictment are that Johnson and Raymond Spencer, co-conspirator, and Fulvio Smaldone, Alfred Bruni, and Giulio Bruni, defendants, agreed and conspired to unlawfully and wilfully to pass and utter with intent to defraud counterfeit obligations of the United States in violation of Section 472, Title 18, U.S.C. and committed the following overt acts:

(1) That on September 9, 1964, they had a conversation (except Spencer)

(2) That on September 11, 1964, they met at Giulio Bruni's house (except Spencer)

(3) That on September 13, 1964, Giulio Bruni passed a counterfeit $20 bill on one, Marie Rahn, at Lowell, Wisconsin.

(4) That on September 13, 1964, Giulio Bruni passed a counterfeit $20 bill on Herbert Monthie, at Astico, Wisconsin in violation of Section 471, Title 18, U.S.C.

In order to prove these charges, the prosecution produced the testimony of the following individuals: Harold Ring, Sr., Harold Ring, Jr., Albert Walters, Herbert Monthie, Emma Frank, Maurice Kuenzi, Marie Rahn, Harold Rahn, Roger Kreitzman, Gerald Fehrman, Robert Shotola, Samuel Lindsay and John Sokoll.

These witnesses all testified to the same facts and circumstances in the Milwaukee case. These witnesses positively identified Dr. Bruni in court, although the occasion was such that not one of these witnesses described Dr. Bruni when police officers and secret service agents were making an on-the-spot investigation. It was only after pictures were shown to them; viewing him at his arraignment in court; and at the trial that they were able to positively identify him. This was the second time these witnesses had the opportunity of identifying the defendant.

Positive identification of Dr. Bruni by the testimony of the Milwaukee witnesses should be scrutinized with extreme care. (*Fisher* v. *U. S.*, 231 F.2d 99). No class of testimony is more uncertain and less to be relied upon than that on identity. The possibility of human error in absence of prior familiarity with the defendant is to be proven by that degree of moral certainty that amounts to proof beyond a reasonable doubt so as to preclude any probability of mistake. The reliability of such testimony depends upon the impression obtained by such witnesses in haste; in a matter of seconds in which to observe the person. (*Sibona* v. *U. S.*, 294 Fed. 272).

COUNT IV

Charges that the defendant on September 24, 1964, at his home in River Forest, Illinois, did knowingly and wilfully possess and conceal two counterfeit $20 U. S. Notes with intent to defraud in violation of Section 472, Title 18, U.S.C.

In support of the charge in Count Four, the Government produced the testimony of Secret Service Agents Nemo Ciochina (App. 274-280) and Richard Sheridan (App. 284-298). Thse two agents among others arrested Giulio Bruni at about 2 A.M. on September 24, 1964, in the driveway of his home; he was handcuffed and told he was under arrest for counterfeiting, Secret Service Agents Ciochina, Sheridan, Clem, and Gorman participated in the arrest and in the search of Dr. Bruni's house. After several hours of searching, two counterfeit notes dropped to the floor. (Govt. Ex. Nos. 39 and 40). They called Dr. Bruni into the sunroom and showed him the bills. Dr. Bruni then and there denied any knowledge of their existence. Kathy Spencer, a defense witness, was in the living room when this alleged finding took place. From where she sat she could hear Agent Sheridan in the other room call his office and report that, "he had no luck", in finding any evidence. It was after this incident that Agent Ciochina allegedly found the two counterfeit notes.

To constitute the possession of forged instruments a crime, the possessor must be actuated by a criminal intent to defraud and to pass, utter, publish and sell such instruments. (*U. S.* v. *Barrett,* 111 F. 369) (*U. S.* v. *Kelley,* 186 F.2d 598; *U. S.* v. *Karll,* 105 U.S. 611; *U. S.* v. *Ruffino,* 67 F.2d 440).

Such evidence was found under such peculiar and strange circumstances as to confirm Dr. Bruni's denial of possessing such counterfeit bills. Where a person charged with crime, has previously been of good character, his denial of that fact should be considered with the other evidence in determining his guilt or innocence. (*Michelson* v. *U. S.*, 335 U.S. 469; *Fisher* v. *U. S.*, 231 F.2d 99).

The defendant is presumed innocent and this presumption continues throughout the trial and is overcome when and only when his guilt is established beyond a reasonable doubt. (*Helton* v. *U. S.*, 231 F.2d 654; *U. S.* v. *Mann*, 108 F.2d 354). The testimony of Ciochina and Sheridan is of a doubtful and unreliable nature. The question is not whether guilt may be spelled out of a record but whether guilt has been found by a jury according to the procedure and standards appropriate for criminal trials. (*U. S.* v. *Palermo*, 250 F.2d 872, p. 881).

CONCLUSION

Wherefore, petitioner prays that this Court allow this Petition for Certiorari and grant the Writ of Certiorari to the Circuit Court of Appeals, Seventh Circuit.

Respectfully submitted,

JOSEPH I. BULGER,
Attorney for Petitioner.